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GOVERNMENT OF TRIPURA
LAW DEPARTMENT
SECRETARIAT : AGARTALA

No.F.11 (2)- Law/Lib/2018/9385-86 **Dated, Agartala the 25th September, 2019.**

Subject : Re-publication of Central Acts & Amendment Acts in the State Gazette.

1. The Arbitration and Conciliation (Amendment) Act, 2019
(Act No. 33 of 2019).

25/09/19

Rahul Roy
Under Secretary, Law
Government of Tripura.

THE ARBITRATION AND CONCILIATION (AMENDMENT) ACT, 2019.

AN
ACT

further to amend the Arbitration and Conciliation Act, 1996.

BE it enacted by Parliament in the Seventieth Year of the Republic of India as follows:—

Short title and commencement.

1. (*1*) This Act may be called the Arbitration and Conciliation (Amendment) Act, 2019.

(*2*) Save as otherwise provided in this Act, it shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Amendment of section 2.

26 of 1996.

2. In the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the principal Act), in section 2,—

(*i*) in sub-section (*1*),—

(*A*) after clause (*c*), the following clause shall be inserted, namely:—

'(*ca*) "arbitral institution" means an arbitral institution designated by the Supreme Court or a High Court under this Act;';

(*B*) after clause (*h*), the following clauses shall be inserted, namely:—

'(*i*) "prescribed" means prescribed by rules made under this Act;

(*j*) "regulations" means the regulations made by the Council under this Act.';

(*ii*) in sub-section (*2*), in the proviso, for the word, brackets and letter "clause (*a*)", the word, brackets and letter "clause (*b*)" shall be substituted.

Amendment of section 11.

3. In section 11 of the principal Act,—

(*i*) after sub-section (*3*), the following sub-section shall be inserted, namely:—

"(*3A*) The Supreme Court and the High Court shall have the power to designate, arbitral institutions, from time to time, which have been graded by the Council under section 43-I, for the purposes of this Act:

Provided that in respect of those High Court jurisdictions, where no graded arbitral institution are available, then, the Chief Justice of the concerned High Court may maintain a panel of arbitrators for discharging the functions and duties of arbitral institution and any reference to the arbitrator shall be deemed to be an arbitral institution for the purposes of this section and the arbitrator appointed by a party shall be entitled to such fee at the rate as specified in the Fourth Schedule:

Provided further that the Chief Justice of the concerned High Court may, from time to time, review the panel of arbitrators.";

(*ii*) in sub-section (*4*), in the long line, for the portion beginning with "the appointment shall be made" and ending with "designated by such Court", the following shall be substituted, namely:—

"the appointment shall be made, on an application of the party, by the arbitral institution designated by the Supreme Court, in case of international commercial arbitration, or by the High Court, in case of arbitrations other than international commercial arbitration, as the case may be";

(*iii*) in sub-section (*5*), for the portion beginning with "the appointment shall be made" and ending with "designated by such Court", the following shall be substituted, namely:—

"the appointment shall be made on an application of the party in accordance with the provisions contained in sub-section (*4*)";

(*iv*) in sub-section (*6*), in the long line, for the portion beginning with "party may request" and ending with "designated by such Court", the following shall be substituted, namely:—

"the appointment shall be made, on an application of the party, by the arbitral institution designated by the Supreme Court, in case of international commercial arbitration, or by the High Court, in case of arbitrations other than international commercial arbitration, as the case may be";

(*v*) sub-sections (*6A*) and (*7*) shall be omitted;

(*vi*) in sub-section (*8*), for the words "The Supreme Court or, as the case may be, the High Court or the person or institution designated by such Court", the words, brackets and figures "The arbitral institution referred to in sub-sections (*4*), (*5*) and (*6*)" shall be substituted;

(*vii*) in sub-section (*9*), for the words "the Supreme Court or the person or institution designated by that Court", the words "the arbitral institution designated by the Supreme Court" shall be substituted;

(*viii*) sub-section (*10*) shall be omitted;

(*ix*) for sub-sections (*11*) to (*14*), the following sub-sections shall be substituted, namely:—

"(*11*) Where more than one request has been made under sub-section (*4*) or sub-section (*5*) or sub-section (*6*) to different arbitral institutions, the arbitral institution to which the request has been first made under the relevant sub-section shall be competent to appoint.

(*12*) Where the matter referred to in sub-sections (*4*), (*5*), (*6*) and (*8*) arise in an international commercial arbitration or any other arbitration, the reference to the arbitral institution in those sub-sections shall be construed as a reference to the arbitral institution designated under sub-section (*3A*).

(*13*) An application made under this section for appointment of an arbitrator or arbitrators shall be disposed of by the arbitral institution within a period of thirty days from the date of service of notice on the opposite party.

(*14*) The arbitral institution shall determine the fees of the arbitral tribunal and the manner of its payment to the arbitral tribunal subject to the rates specified in the Fourth Schedule.

Explanation.—For the removal of doubts, it is hereby clarified that this sub-section shall not apply to international commercial arbitration and in arbitrations (other than international commercial arbitration) where parties have agreed for determination of fees as per the rules of an arbitral institution.".

Amendment of section 17.

4. In section 17 of the principal Act, in sub-section (*1*), the words and figures "or at any time after the making of the arbitral award but before it is enforced in accordance with section 36" shall be omitted.

Amendment of section 23.

5. In section 23 of the principal Act, after sub-section (*3*), the following sub-section shall be inserted, namely:—

"(*4*) The statement of claim and defence under this section shall be completed within a period of six months from the date the arbitrator or all the arbitrators, as the case may be, received notice, in writing, of their appointment.".

Amendment of section 29A.

6. In section 29A of the principal Act,—

(*a*) for sub-section (*1*), the following sub-section shall be substituted, namely:—

"(*1*) The award in matters other than international commercial arbitration shall be made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings under sub-section (*4*) of section 23:

Provided that the award in the matter of international commercial arbitration may be made as expeditiously as possible and endeavour may be made to dispose of the matter within a period of twelve months from the date of completion of pleadings under sub-section (*4*) of section 23.";

(*b*) in sub-section (*4*), after the proviso, the following provisos shall be inserted, namely:—

"Provided further that where an application under sub-section (*5*) is pending, the mandate of the arbitrator shall continue till the disposal of the said application:

Provided also that the arbitrator shall be given an opportunity of being heard before the fees is reduced.".

Amendment of section 34.

7. In section 34 of the principal Act, in sub-section (*2*), in clause (*a*), for the words "furnishes proof that", the words "establishes on the basis of the record of the arbitral tribunal that" shall be substituted.

Amendment of section 37.

8. In section 37 of the principal Act, in sub-section (*1*), for the words "An appeal", the words "Notwithstanding anything contained in any other law for the time being in force, an appeal" shall be substituted.

Insertion of new sections 42A and 42B.

9. After section 42 of the principal Act, the following sections shall be inserted, namely:—

Confidentiality of information.

"42A. Notwithstanding anything contained in any other law for the time being in force, the arbitrator, the arbitral institution and the parties to the arbitration agreement shall maintain confidentiality of all arbitral proceedings except award where its disclosure is necessary for the purpose of implementation and enforcement of award.

Protection of action taken in good faith.

42B. No suit or other legal proceedings shall lie against the arbitrator for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.".

Insertion of new Part.

10. After Part I of the principal Act, the following Part shall be inserted, namely:—

'PART IA

ARBITRATION COUNCIL OF INDIA

Definitions.

43A. In this Part, unless the context otherwise requires,—

(*a*) "Chairperson" means the Chairperson of the Arbitration Council of India appointed under clause (*a*) of sub-section (*1*) of section 43C;

(*b*) "Council" means the Arbitration Council of India established under section 43B;

(*c*) "Member" means a Member of the Council and includes the Chairperson.

Establishment and incorporation of Arbitration Council of India.

43B. (*1*) The Central Government shall, by notification in the Official Gazette, establish, for the purposes of this Act, a Council to be known as the Arbitration Council of India to perform the duties and discharge the functions under this Act.

(*2*) The Council shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to enter into contract, and shall, by the said name, sue or be sued.

(*3*) The head office of the Council shall be at Delhi.

(*4*) The Council may, with the prior approval of the Central Government, establish offices at other places in India.

Composition of Council.

43C. (*1*) The Council shall consist of the following Members, namely:—

(*a*) a person, who has been, a Judge of the Supreme Court or, Chief Justice of a High Court or, a Judge of a High Court or an eminent person, having special knowledge and experience in the conduct or administration of arbitration, to be appointed by the Central Government in consultation with the Chief Justice of India–Chairperson;

(*b*) an eminent arbitration practitioner having substantial knowledge and experience in institutional arbitration, both domestic and international, to be nominated by the Central Government–Member;

(*c*) an eminent academician having experience in research and teaching in the field of arbitration and alternative dispute resolution laws, to be appointed by the Central Government in consultation with the Chairperson–Member;

(*d*) Secretary to the Government of India in the Department of Legal Affairs, Ministry of Law and Justice or his representative not below the rank of Joint Secretary–Member, *ex officio*;

(*e*) Secretary to the Government of India in the Department of Expenditure, Ministry of Finance or his representative not below the rank of Joint Secretary–Member, *ex officio*;

(*f*) one representative of a recognised body of commerce and industry, chosen on rotational basis by the Central Government–Part-time Member; and

(*g*) Chief Executive Officer-Member-Secretary, *ex officio*.

(*2*) The Chairperson and Members of the Council, other than *ex officio* Members, shall hold office as such, for a term of three years from the date on which they enter upon their office:

Provided that no Chairperson or Member, other than *ex officio* Member, shall hold office as such after he has attained the age of seventy years in the case of Chairperson and sixty-seven years in the case of Member.

(*3*) The salaries, allowances and other terms and conditions of the Chairperson and Members referred to in clauses (*b*) and (*c*) of sub-section (*1*) shall be such as may be prescribed by the Central Government.

(*4*) The Part-time Member shall be entitled to such travelling and other allowances as may be prescribed by the Central Government.

Duties and functions of Council.

43D. (*1*) It shall be the duty of the Council to take all such measures as may be necessary to promote and encourage arbitration, mediation, conciliation or other alternative dispute resolution mechanism and for that purpose to frame policy and guidelines for the establishment, operation and maintenance of uniform professional standards in respect of all matters relating to arbitration.

(*2*) For the purposes of performing the duties and discharging the functions under this Act, the Council may—

(*a*) frame policies governing the grading of arbitral institutions;

(*b*) recognise professional institutes providing accreditation of arbitrators;

(*c*) review the grading of arbitral institutions and arbitrators;

(*d*) hold training, workshops and courses in the area of arbitration in collaboration of law firms, law universities and arbitral institutes;

(*e*) frame, review and update norms to ensure satisfactory level of arbitration and conciliation;

(*f*) act as a forum for exchange of views and techniques to be adopted for creating a platform to make India a robust centre for domestic and international arbitration and conciliation;

(*g*) make recommendations to the Central Government on various measures to be adopted to make provision for easy resolution of commercial disputes;

(*h*) promote institutional arbitration by strengthening arbitral institutions;

(*i*) conduct examination and training on various subjects relating to arbitration and conciliation and award certificates thereof;

(*j*) establish and maintain depository of arbitral awards made in India;

(*k*) make recommendations regarding personnel, training and infrastructure of arbitral institutions; and

(*l*) such other functions as may be decided by the Central Government.

Vacancies, etc., not to invalidate proceedings of Council.

43E. No act or proceeding of the Council shall be invalid merely by reason of—

(*a*) any vacancy or any defect, in the constitution of the Council;

(*b*) any defect in the appointment of a person acting as a Member of the Council; or

(*c*) any irregularity in the procedure of the Council not affecting the merits of the case.

Resignation of Members.

43F. The Chairperson or the Full-time or Part-time Member may, by notice in writing, under his hand addressed to the Central Government, resign his office:

Provided that the Chairperson or the Full-time Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is earlier.

Removal of Member.

43G. (*1*) The Central Government may, remove a Member from his office if he—

(*a*) is an undischarged insolvent; or

(*b*) has engaged at any time (except Part-time Member), during his term of office, in any paid employment; or

(*c*) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(*d*) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Member; or

(*e*) has so abused his position as to render his continuance in office prejudicial to the public interest; or

(*f*) has become physically or mentally incapable of acting as a Member.

(*2*) Notwithstanding anything contained in sub-section (*1*), no Member shall be removed from his office on the grounds specified in clauses (*d*) and (*e*) of that sub-section unless the Supreme Court, on a reference being made to it in this behalf by the Central Government, has, on an inquiry, held by it in accordance with such procedure as may be prescribed in this behalf by the Supreme Court, reported that the Member, ought on such ground or grounds to be removed.

Appointment of experts and constitution of Committees thereof.

43H. The Council may, appoint such experts and constitute such Committees of experts as it may consider necessary to discharge its functions on such terms and conditions as may be specified by the regulations.

General norms for grading of arbitral institutions.

43-I. The Council shall make grading of arbitral institutions on the basis of criteria relating to infrastructure, quality and calibre of arbitrators, performance and compliance of time limits for disposal of domestic or international commercial arbitrations, in such manner as may be specified by the regulations.

Norms for accreditation.

43J. The qualifications, experience and norms for accreditation of arbitrators shall be such as specified in the Eighth Schedule:

Provided that the Central Government may, after consultation with the Council, by notification in the Official Gazette, amend the Eighth Schedule and thereupon, the Eighth Schedule shall be deemed to have been amended accordingly.

Depository of awards.

43K. The Council shall maintain an electronic depository of arbitral awards made in India and such other records related thereto in such manner as may be specified by the regulations.

Power to make regulations by Council.

43L. The Council may, in consultation with the Central Government, make regulations, consistent with the provisions of this Act and the rules made thereunder, for the discharge of its functions and perform its duties under this Act.

Chief Executive Officer.

43M. (*1*) There shall be a Chief Executive Officer of the Council, who shall be responsible for day-to-day administration of the Council.

(*2*) The qualifications, appointment and other terms and conditions of the service of the Chief Executive Officer shall be such as may be prescribed by the Central Government.

(*3*) The Chief Executive Officer shall discharge such functions and perform such duties as may be specified by the regulations.

(*4*) There shall be a Secretariat to the Council consisting of such number of officers and employees as may be prescribed by the Central Government.

(*5*) The qualifications, appointment and other terms and conditions of the service of the employees and other officers of the Council shall be such as may be prescribed by the Central Government.'.

Amendment of section 45.

11. In section 45 of the principal Act, for the words "unless it finds", the words "unless it *prima facie* finds", shall be substituted.

Amendment of section 50.

12. In section 50 of the principal Act, in sub-section (*1*), for the words "An appeal", the words "Notwithstanding anything contained in any other law for the time being in force, an appeal" shall be substituted.

Insertion of new section 87.

13. After section 86 of the principal Act, the following section shall be inserted and shall be deemed to have been inserted with effect from the 23rd October, 2015, namely:—

Effect of arbitral and related court proceedings commenced prior to 23rd October, 2015.

"87. Unless the parties otherwise agree, the amendments made to this Act by the Arbitration and Conciliation (Amendment) Act, 2015 shall— 3 of 2016.

(*a*) not apply to—

(*i*) arbitral proceedings commenced before the commencement of the Arbitration and Conciliation (Amendment) Act, 2015; 3 of 2016.

(*ii*) court proceedings arising out of or in relation to such arbitral proceedings irrespective of whether such court proceedings are commenced prior to or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015; 3 of 2016.

(*b*) apply only to arbitral proceedings commenced on or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015 and to court proceedings arising out of or in relation to such arbitral proceedings.". 3 of 2016.

Insertion of new Schedule.

14. After the Seventh Schedule to the principal Act, the following Schedule shall be inserted, namely: —

"THE EIGHTH SCHEDULE

(*See* section 43J)

Qualifications and Experience of Arbitrator

A person shall not be qualified to be an arbitrator unless he—

(*i*) is an advocate within the meaning of the Advocates Act, 1961 having ten years of practice experience as an advocate; or 25 of 1961.

(*ii*) is a chartered accountant within the meaning of the Chartered Accountants Act, 1949 having ten years of practice experience as a chartered accountant; or 38 of 1949.

(*iii*) is a cost accountant within the meaning of the Cost and Works Accountants Act, 1959 having ten years of practice experience as a cost accountant; or 23 of 1959.

(*iv*) is a company secretary within the meaning of the Company Secretaries Act, 1980 having ten years of practice experience as a company secretary; or 56 of 1980.

(*v*) has been an officer of the Indian Legal Service; or

(*vi*) has been an officer with law degree having ten years of experience in the legal matters in the Government, Autonomous Body, Public Sector Undertaking or at a senior level managerial position in private sector; or

(*vii*) has been an officer with engineering degree having ten years of experience as an engineer in the Government, Autonomous Body, Public Sector Undertaking or at a senior level managerial position in private sector or self-employed; or

(*viii*) has been an officer having senior level experience of administration in the Central Government or State Government or having experience of senior level management of a Public Sector Undertaking or a Government company or a private company of repute;

(*ix*) is a person, in any other case, having educational qualification at degree level with ten years of experience in scientific or technical stream in the fields of telecom, information technology, Intellectual Property Rights or other specialised areas in the Government, Autonomous Body, Public Sector Undertaking or a senior level managerial position in a private sector, as the case may be.

General norms applicable to Arbitrator

(*i*) The arbitrator shall be a person of general reputation of fairness, integrity and capable to apply objectivity in arriving at settlement of disputes;

(*ii*) the arbitrator must be impartial and neutral and avoid entering into any financial business or other relationship that is likely to affect impartiality or might reasonably create an appearance of partiality or bias amongst the parties;

(*iii*) the arbitrator should not involve in any legal proceeding and avoid any potential conflict connected with any dispute to be arbitrated by him;

(*iv*) the arbitrator should not have been convicted of an offence involving moral turpitude or economic offence;

(*v*) the arbitrator shall be conversant with the Constitution of India, principles of natural justice, equity, common and customary laws, commercial laws, labour laws, law of torts, making and enforcing the arbitral awards;

(*vi*) the arbitrator should possess robust understanding of the domestic and international legal system on arbitration and international best practices in regard thereto;

(*vii*) the arbitrator should be able to understand key elements of contractual obligations in civil and commercial disputes and be able to apply legal principles to a situation under dispute and also to apply judicial decisions on a given matter relating to arbitration; and

(*viii*) the arbitrator should be capable of suggesting, recommending or writing a reasoned and enforceable arbitral award in any dispute which comes before him for adjudication.".

Amendment to Act 3 of 2016.

15. Section 26 of the Arbitration and Conciliation (Amendment) Act, 2015 shall be omitted and shall be deemed to have been omitted with effect from the 23rd October, 2015.

16. In the Fourth Schedule to the principal Act, for the brackets, words and figures "[*See* section 11 (*14*)]", the brackets, words, figures and letter "[*See* section 11 (*3A*)]" shall be substituted. Amendment to Fourth Schedule.